

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
MAR 1 2002
FEDERAL DISTRICT COURT
DISTRICT OF NEW MEXICO

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Robert J. Walsh
CLERK OF COURT

JAMES SEABA and CORY PHILLIPS,

Plaintiffs,

v.

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

NO. CIV-02-0103 DJS/WWD

**DEFENDANT'S MOTION TO DISMISS OR TRANSFER FOR IMPROPER
VENUE**

Defendant MesoSystems Technology, Inc. ("MesoSystems") by and through its attorneys and pursuant to F.R.C.P. 12 (b)(3) or 28 U.S.C. §1406 respectfully request this Court dismiss this action for improper venue, or, in the alternative, transfer this matter to the Federal District Court for the Eastern District of Washington where venue properly lies.

As grounds for this Motion, MesoSystems concurrently files its Memorandum in support of this Motion.

WHEREFORE, MesoSystems respectfully prays for dismissal of this action pursuant to F.R.C.P 12(b)(3) for improper venue and allow the parties to refile this action in state or federal court in Benton County, Washington, or, alternatively to transfer this action pursuant to 28 U.S.C. § 1406(a) to another Federal District Court for the Eastern District of Washington

DATED: February 19, 2002.

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BAUMAN, DOW & McINTOSH, P.C.

By



Christopher P. Bauman

Attorneys for Defendant

PO Box 30684

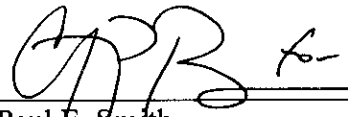
Albuquerque, New Mexico 87190

(505) 883-3191-telephone

(505) 883-3194-facsimile

PERKINS COIE, LLP

By



Paul E. Smith

Attorneys for Defendant

One Bellevue Center

Suite 1800, 411

108th Avenue NE

Bellevue, Washington 98004-5584

(425) 453-7317-telephone

(425) 453-7350-facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Motion to Appear *Pro Hac Vice* was mailed via U.S. Mail to the following, on this 15th day of February, 2002.

Lisa Mann

Angelo J. Artuso

Erin E. Langenwalter

MODRALL LAW FIRM

Attorneys for Plaintiffs

PO Box 2168

Albuquerque, New Mexico 87103-2168

(505) 848-1800